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CARGO AGENTS, INC.,  
INTERNATIONAL TRANSPORT  
MANAGEMENT CORP.,  
and RCL AGENCIES, INC., on behalf of  
themselves and all others similarly  
situated,

Complainants,

-against-

NIPPON YUSEN KABUSHIKI KAISHA,  
NYK LINE (NORTH AMERICA) INC.,  
MITSUI O.S.K. LINES, LTD., MITSUI  
O.S.K. BULK SHIPPING (USA) INC.,  
WORLD LOGISTICS SERVICE (U.S.A.)  
INC., KAWASAKI KISEN KAISHA,  
LTD., "K" LINE AMERICA, INC.,  
EUKOR CAR CARRIERS INC.,  
WALLENIOUS WILHELMSSEN  
LOGISTICS AS, WALLENIOUS  
WILHELMSSEN LOGISTICS AMERICAS  
LLC, COMPAÑIA SUD AMERICANA  
DE VAPORES S.A., CSAV AGENCY  
NORTH AMERICA, LLC, HÖEGH  
AUTOLINERS HOLDINGS AS, HÖEGH  
AUTOLINERS AS, HÖEGH  
AUTOLINERS, INC., AUTOTRANS AS,  
ALLIANCE NAVIGATION LLC, and  
NISSAN MOTOR CAR CARRIER CO.,  
LTD.

Respondents.

Docket No. 16-01

CLASS ACTION COMPLAINT



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## **INTRODUCTION**

1. Complainants Cargo Agents, Inc., International Transport Management, Corp., and RCL Agencies, Inc., by their undersigned attorneys, individually and on behalf of all others similarly situated, bring this Complaint to recover reparations and the costs of suit, including reasonable attorneys' fees, for their injuries and those of the members of the proposed Class (as defined below) resulting from Respondents' violations of provisions of the Shipping Act of 1984, 46 U.S.C. § 40101 *et seq.* (the "Shipping Act"), including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

## **NATURE OF THE CLAIMS**

2. Respondents are the largest providers of deep sea vehicle transport services ("Vehicle Carrier Services," described more fully below) in the world, including for shipments to and from the United States. Since at least February 1997, Respondents have conspired to allocate customers and markets, to rig bids, to restrict supply, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, pursuant to agreements between and among them that were not filed with the Federal Maritime Commission ("FMC" or the "Commission") and that otherwise violated the Shipping Act and regulations promulgated thereunder. Respondents' conspiracy and agreements caused Complainants and others who directly purchased Vehicle Carrier Services from Respondents to pay artificially inflated prices.

3. Competition authorities in the United States, Canada, Japan, and the European Union ("EU") have been actively investigating anticompetitive practices with respect to Vehicle Carrier Services. Respondents CSAV, "K" Line Japan, and NYK Japan (defined below, respectively) have all pled guilty to criminal Informations filed by the United States Department

of Justice (“DOJ”) for conspiring to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Japan Fair Trade Commission (“JFTC”) has also issued cease and desist orders and fines against Respondents NYK Line, “K” Line, WWL, and NMCC. Additionally, at least three executives of “K” Line Japan and at least one executive of NYK Japan have pled guilty to Sherman Act violations, and the DOJ has indicted at least three additional former executives of Respondents NYK Japan and “K” Line Japan for conspiring to fix prices and suppress competition in the market for Vehicle Carrier Services in violation of the Sherman Act.

4. Complainants bring this Complaint on behalf of themselves and all other persons or entities who purchased Vehicle Carrier Services directly from one or more Respondents for shipments to and from the United States between February 1997 and December 31, 2012 (the “Class Period”) to recover damages sustained as a result of Respondents’ unlawful conduct.

#### **JURISDICTION AND VENUE**

5. The FMC has jurisdiction over this Complaint under the Shipping Act, including 46 U.S.C. §§ 41301 and 41305. This Complaint alleges that Respondents have entered into secret, unfiled, and unlawful agreements to allocate customers and markets, rig bids, restrict supply, and to otherwise raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipments to and from the United States, in violation of provisions of the Shipping Act, including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

6. The activities of Respondents and their co-conspirators, as alleged in this Complaint: (a) constituted United States interstate trade or commerce; (b) constituted United

States import trade or import commerce; or (c) were within the flow of and had a direct, substantial, and reasonably foreseeable effect on United States domestic trade or commerce or United States import trade or commerce. Given the volume of affected commerce, such effects were direct and substantial.

7. The Commission has personal jurisdiction over each Respondent because each Respondent is a “common carrier” and “ocean common carrier” as defined in the Shipping Act, 46 U.S.C. § 40102(6) and (17). Each Respondent further: (a) transacted business within the United States; (b) directly sold Vehicle Carrier Services within the United States; (c) had substantial aggregate contacts with the United States as a whole; and (d) was engaged in an illegal conspiracy directed at, and which had a direct, substantial, reasonably foreseeable, and intended effect of, causing injury to the business or property of persons and entities residing in, located in, or doing business within the United States. Respondents conduct business within the United States, and they have purposefully availed themselves of the laws of the United States.

## **PARTIES**

### **Complainants**

8. Complainant Cargo Agents, Inc., (“Cargo Agents”) is a Wyoming corporation with its principal place of business in Flushing, NY. Cargo Agents’ address is 143-30 38th Ave., Suite 1H, Flushing, NY 11354-5742, and its email address is mail@cargoagents.net. Cargo Agents directly purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

9. Complainant International Transport Management Corp. (“ITM”) is a New Jersey corporation with its principal place of business in New Jersey. ITM’s address is 15 Main St., Unit 951, Flemington, NJ 08822, and its email address is itm@itm-corp.com. ITM directly

purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

10. Complainant RCL Agencies, Inc. ("RCL") is a New Jersey corporation with principal place of business in Clifton, New Jersey. RCL's address is 842 Clifton Ave., Clifton NJ, 07869, and the business email address of its President, Patrick Costin, is patrick.costin@oceanfreight.com. RCL purchased Vehicle Carrier Services from one or more Respondents during the Class Period and was directly injured as a result.

### **Respondents**

11. Respondent Nippon Yusen Kabushiki Kaisha ("NYK Japan") is a Japanese company with its principal place of business in the Yusen Building, Marunouchi, Chiyoda, Tokyo 100-0005, Japan. Respondent NYK Line (North America) Inc. ("NYK America") is a wholly-owned subsidiary of NYK Japan with its principal place of business at 300 Lighting Way, Secaucus, NJ 07094. During the Class Period, NYK Japan and NYK America (collectively, "NYK Line"), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

12. Respondent Mitsui O.S.K. Lines, Ltd., ("MOL Japan") is a Japanese company with its principal place of business in Toranomon, Minato, Tokyo 105-0001, Japan. Respondent Mitsui O.S.K. Bulk Shipping (USA), Inc., ("MOBUSA") is a subsidiary of MOL Japan with its principal place of business at 1710 Plaza Five, Jersey City, NJ 07311. Respondent World Logistics Service (U.S.A.) Inc. ("WLS") is a subsidiary of MOL Japan with its principal place of business at 111 West Ocean Blvd., Suite 1040, Long Beach, California 90802-4622. Respondent Nissan Motor Car Carrier Co., Ltd., ("NMCC") is a Japanese company with its principal place of

business Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. Since 2009, NMCC has been owned 70% by MOL Japan, 20% by HAL (defined below), and 10% by Nissan Motor Co., Ltd. (“Nissan”). From 1998 to 2009, NMCC was owned 40% by MOL Japan and 60% by Nissan. During the Class Period, MOL Japan, MOBUSA, WLS, and NMCC (collectively, “MOL”), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

13. Respondent Kawasaki Kisen Kaisha, Ltd., (“K’ Line Japan”) is a Japanese company with its principal place of business in the Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan. Respondent “K” Line America, Inc., (“K’ Line America”) is a wholly-owned subsidiary of “K” Line Japan with its principal place of business at 8730 Stony Point Parkway, Suite 400, Richmond, Virginia 23235. During the Class Period, “K” Line Japan and “K” Line America (collectively, “K’ Line”), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

14. Respondent EUKOR Car Carriers Inc. (“EUKOR”) is a South Korean company with its principal place of business at 24F Gangnam Finance Center, 152 Teheran-ro, Gangnam-gu, Seoul, South Korea, 135-984. EUKOR is a joint venture: Wilh. Wilhelmsen ASA (co-owner of WWL Norway, defined below) owns 40%, Wallenius Lines AB (co-owner of WWL Norway, defined below) owns 40%, and Hyundai Motor Company and Kia Motors Corporation collectively own 20%. During the Class Period, EUKOR, directly or through its wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.



15. Respondent Wallenius Wilhelmsen Logistics AS (“WWL Norway”) is a Norwegian company with its principal place of business at Strandveien 20, 1366 Lysaker, Norway. Respondent Wallenius Wilhelmsen Logistics Americas LLC (“WWL America”) is a wholly-owned subsidiary of WWL Norway with its principal place of business at 188 Broadway # 1, Woodcliff Lake, New Jersey 07677. During the Class Period, WWL Norway and WWL America (collectively, “WWL”), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

16. Respondent Compañía Sud Americana de Vapores S.A. (“CSAV Chile”) is a Chilean company with its principal place of business at Blanco # 937, Edificio Tecnopacifico, Piso 1, Valparaiso, Chile. Respondent CSAV Agency North America, LLC (“CSAV Agency”) is a wholly-owned subsidiary of CSAV Chile, with its principal place of business located at 99 Wood Avenue South, 9th Floor Iselin, NJ 08830. During the Class Period, CSAV Chile and CSAV Agency (collectively, “CSAV”), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

17. Respondent Høegh Autoliners Holdings AS (“HAL Holdings”) is a Norwegian company with its principal place of business at Drammensveien 134, Oslo, Norway (mailing address P.O Box 4 Skøyen - 0212, Oslo, Norway). Respondent Høegh Autoliners AS (“HAL AS”) is a wholly-owned subsidiary of HAL Holdings with the same principal business address as HAL Holdings. Respondent AUTOTRANS AS (“AUTOTRANS”) is a wholly-owned subsidiary of HAL Holdings with its principal place of business at 167 Av. des Grésillons, 92230 Gennevilliers, France. Respondent Høegh Autoliners, Inc. (“HAL Inc.”) is a wholly-owned

subsidiary of HAL Holdings with its principal place of business at 5263 Intermodal Dr, Jacksonville, FL 32226. Respondent Alliance Navigation LLC (“Alliance”) is a wholly-owned affiliate of HAL Inc. with its principal place of business at 2615 Port Industrial Drive, Suite 405, Jacksonville, FL 32226. During the Class Period, HAL Holdings, HAL AS, AUTOTRANS, HAL Inc., and Alliance (collectively, “HAL”), directly or through their wholly-owned and controlled subsidiaries, provided, marketed, and sold Vehicle Carrier Services for shipments to and from the United States.

### **Agents and Co-Conspirators**

18. Various other individuals, firms, and corporations, not named as Respondents in this Complaint, may have participated as co-conspirators with Respondents and performed acts and made statements in furtherance of the conspiracy. Complainants reserve the right to name some or all of these individuals, firms, and corporations as Respondents.

19. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while actively engaged in the management, direction, control, or transaction of the corporation’s or limited liability entity’s business or affairs.

### **BACKGROUND ON VEHICLE CARRIER SERVICES**

20. Vehicle Carrier Services involve transporting any type of wheeled freight on large, ocean-shipping vessels on deep-sea routes. The freight shipped includes all types of vehicles, including cars, trucks, construction vehicles, tracked vehicles and machines (such as excavators or bulldozers), tractors, trailers, capital equipment vehicles used in construction, agriculture, and mining, and other types of wheeled freight.

21. Vehicle Carrier Services involve the use of specialized vessels equipped with ramps such that wheeled freight can be rolled on or rolled off of the vessels. The term “RoRo” is often used to refer to these vessels (“RoRo Vessels”) or to the transport of vehicles on such vessels (“RoRo Shipping”).

22. There are two types of RoRo vessels: Pure Car Carriers (“PCCs”) and Pure Car and Truck Carriers (“PCTCs”). PCCs were designed exclusively for the movement of passenger cars (and possibly small trucks). They can be thought of as movable parking garages with up to 10 to 12 levels (or decks). PCTCs were designed to carry cars and trucks. The main distinguishing feature between PCTCs and PCCs is that PCTCs are equipped with hydraulics that can move the decks within the vessel to enable the vessel to carry vehicles of varying sizes.

23. Although some smaller-wheeled freight conceivably can be put into containers and loaded by crane onto a container ship, transporting such vehicles on RoRo vessels is the preferred method because:

- a. To transport a vehicle inside a container, special inserts are typically placed inside the container to maximize the number of vehicles that can fit inside;
- b. Once a vehicle is driven into a container, it needs to be secured within the container and then transported to a port to be loaded by crane onto a vessel;
- c. The steps outlined above take considerably more time than rolling vehicles onto RoRo vessels and are associated with additional costs;
- d. The cost of shipping a vehicle in a container is typically higher than, and can be as much as two to three times the cost of, shipping that same vehicle via a RoRo vessel;

- e. Vehicles may be damaged when they are driven in and out of containers, and their close proximity during shipping can also cause damage; and
- f. If multiple vehicles are placed inside a container in a stacked fashion, there is a risk that oil or other fluids from one car can leak on other cars, also causing damage.

24. There are no reasonable substitutes for Vehicle Carrier Services for shipping wheeled freight over deep seas.

25. Complainants and members of the proposed Class (collectively, “Direct Purchasers”) include companies that arrange for the international ocean transportation of vehicles and other individuals or entities purchasing directly from any Respondent (or from any current or former subsidiary or affiliate of any Respondent) Vehicle Carrier Services for shipments to and from the United States.

### **SUSCEPTIBILITY OF VEHICLE CARRIER SERVICES TO COLLUSION**

26. Vehicle Carrier Services are particularly susceptible to collusion because of high concentration, the commodity-like nature of the services at issue, high barriers to entry, inelasticity of demand, and ample opportunities for the Respondents to meet and collude.

#### **Concentration**

27. During the Class Period, Respondents accounted for roughly two-thirds or more of the global capacity of Vehicle Carrier Services.

#### **Commodity-Like Services**

28. Vehicle Carrier Services are homogeneous, commodity-like services. Purchasers of Vehicle Carrier Services choose providers almost exclusively based on price, because the

qualitative differences between each provider are negligible. Thus, from the purchasers' perspective, providers of Vehicle Carrier Services are essentially interchangeable.

29. The homogenous and interchangeable nature of Vehicle Carrier Services makes it easier to create and maintain an unlawful conspiracy, agreement, or cartel because coordinating conduct and prices, as well as policing those collusively set prices, is less difficult than if Respondents had distinctive services that could be differentiated based upon features other than price.

### **Barriers to Entry**

30. There are substantial entry barriers that a new provider of Vehicle Carrier Services would face. A new entrant would encounter significant hurdles, including multi-million dollar start-up costs associated with acquiring ships and equipment, distribution infrastructure, and hiring skilled labor and a sales force.

31. Additionally, the lack of reputation and customer relationships can be problematic for a new entrant; at least one Respondent has publicly stated that the strong relationships that vehicle carriers forge with their customers create high barriers to entry.

### **Demand Inelasticity**

32. Demand for Vehicle Carrier Services is highly inelastic because there are no close substitutes. A RoRo vessel is built specifically to transport the large, irregular shapes of wheeled vehicles and to enable those vehicles to be quickly and efficiently loaded to and unloaded from the vessel.

33. Therefore, a price increase in Vehicle Carrier Services does not induce purchasers into using other types of cargo vessels or services. By allowing producers to raise prices without triggering customer substitution and lost sales revenue, inelastic demand facilitates collusion.

### **Opportunities for Conspiratorial Communications**

34. The shipping industry has been characterized as a small world where many of the key figures know each other. Many employees of the Respondents have spent their entire careers in the shipping industry. Key employees have also transferred between the Respondent companies, fostering familiarity and connections between professed competitors and facilitating high-level coordination for the conspiracy.

35. Respondents are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Respondents are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010 that was attended by representatives of several Respondents, including executives who will be identified herein as “K” Line Executive 1 and NYK Line Executive 1.

36. Respondents CSAV (through its subsidiary CSAV Agency), NYK America, “K” Line America, MOL (through its subsidiary, MOL (America), Inc.), and WWL America are members of the United States Maritime Alliance, Ltd.

37. Respondents “K” Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

38. Respondents “K” Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

39. Respondents CSAV, “K” Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

40. Respondents CSAV, “K” Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

41. Respondents NYK Line, “K” Line, and MOL are members of the Japanese Shipowners’ Association, a trade association based in Japan.

42. These associations—and the meetings, trade shows, and other industry events that stem from them—provided Respondents with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy.

43. Respondents also routinely enter into vessel-sharing agreements whereby they reserve space on each other’s ships. These sharing or chartering agreements are very common in the international maritime shipping industry.

44. A “space charter” occurs when a shipping carrier charters space on another shipping carrier’s vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity.

45. A “time charter” occurs when a shipping carrier fully charters another vehicle carrier’s vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

46. While ostensibly entered into to optimize utilization and increase efficiency, such sharing and chartering agreements also provided opportunities for Respondents to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

#### **RESPONDENTS’ ANTICOMPETITIVE CONDUCT**

47. Since at least February 1997, Respondents have engaged in a continuous and wide-ranging conspiracy to restrain competition for the sale of Vehicle Carrier Services. Respondents have conspired to fix (and have fixed) prices for Vehicle Carrier Services, to allocate (and have allocated) customers for Vehicle Carrier Services, and to restrict (and have

restricted) the supply of Vehicle Carrier Services. Respondents' conspiracy has resulted in higher prices of Vehicle Carrier Services for shipments to and from the United States.

48. Complainants plead the following known anticompetitive acts as exemplars of Respondents' conduct in the provision of Vehicle Carrier Services; Respondents' persistent and pervasive acts restrained trade and caused prices to be artificially inflated in the sale of Vehicle Carrier Services for shipments to and from the United States.

49. Because Respondents' conspiracy was secret in nature, and because Respondents took steps to conceal their anticompetitive agreements, Complainants cannot yet know all the ways that Respondents conspired. On information and belief, Complainants allege that Respondents engaged in acts in furtherance of their conspiracy in addition to those specifically alleged in this Complaint, and that such additional acts also restrained trade in the sale of Vehicle Carrier Services for shipments to and from the United States.

**Respondents Conspired to Reduce Vehicle Carrier Services Fleet Capacity**

50. During the Class Period, Respondents' executives had frequent communications regarding reducing Vehicle Carrier Services capacity, and they reached agreements concerning the capacity reduction. These capacity reductions, and the higher prices that resulted from them, were an effect of Respondents' conspiracy and were not caused by natural market forces.

51. Respondents reduced capacity by agreeing to scrap and "layup" vessels. Scrapping refers to destroying a vessel by breaking it up and selling the pieces for scrap. A layup occurs when a vessel is taken out of commission but not scrapped. In a "cold layup," the vessel sits idle without a crew and is not maintained. In a "hot layup," the vessel is staffed and maintained but not put into service. The costs for putting a vessel back into service are higher after a cold layup than after a hot layup.



52. During the Class Period, the Respondents discussed scrapping vessels, vessel layups, and plans for building new vessels. In connection with those discussions, Respondents reached agreements to control or reduce capacity, which resulted in artificially inflated prices for Vehicle Carrier Services for shipments to and from the United States.

53. For instance, from the late 1990s through 2002, executives from MOL, “K” Line, NYK Line, HAL, and WWL met twice a year—once in Japan and once in Europe—to discuss and agree on vessel scrapping and building plans and to exchange data. They also discussed Vehicle Carrier Services pricing for routes where they believed prices were particularly low. These Respondents continued their data exchange into 2003.

54. In 2008, demand for Vehicle Carrier Services fell dramatically as a result of the worldwide financial crisis, leaving Respondents with excess capacity. In response, Respondents conspired to reduce the supply of Vehicle Carrier Services by engaging in a number of acts, including the following:

- a. In late 2008 or early 2009, executives from MOL and NYK Line met and agreed to reduce their respective fleet sizes by scrapping RoRo vessels. They also agreed to resist price reduction requests from customers.
- b. “K” Line likewise agreed to scrap some of its vessels after being approached by MOL or NYK Line.
- c. During late 2008 to early 2009, MOL also discussed fleet reductions and reached understandings concerning such reductions with WWL, HAL, and EUKOR.
- d. In or around 2009, WWL, HAL, and “K” Line agreed to layup RoRo vessels to reduce capacity.

- e. MOL Executive 1, Mr. Kato of NYK Line,<sup>1</sup> WWL Executive 1, HAL Executive 1, and “K” Line Executive 1 were involved in these discussions and ensuing agreements to scrap or layup vessels.
- f. As a result of Respondents’ agreements, MOL scrapped approximately 40 vessels, NYK Line scrapped approximately 40 vessels, “K” Line scrapped approximately 25 vessels, and HAL scrapped approximately 10 vessels. In total, the Respondents scrapped at least 20 percent of the vessels across the industry and placed an additional 15 percent of PCTCs in layups.
- g. Almost no orders for new vessels were placed between 2009 and 2011.

55. In addition to scrapping and layups, Respondents controlled excess capacity by “slow steaming” their RoRo vessels to create artificial supply shortages. This practice lowers the speed of the vessels and increases sailing time, which in turn decreases capacity. As a result of the Respondents’ agreements to slow-steam their vessels, by mid-2011, NYK Line, “K” Line, and MOL had reduced speeds on nearly every vessel, and NYK Line reduced PCTC speeds from 18-20 to 12-15 knots.

56. The Respondents’ agreements to control or reduce capacity through vessel scrapping, layups, and slow-steaming reduced capacity and resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

57. The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

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<sup>1</sup> Mr. Kato is identified by name because his name was made public in a DOJ indictment filed October 6, 2015. Other Respondent executives identified herein by name have also had their identities made public by DOJ indictments, criminal Informations, and/or guilty pleas.

**Respondents Conspired to Fix, Raise, or Artificially Maintain  
Prices for Vehicle Carrier Services**

58. In addition to their communications and agreements to control or reduce capacity, Respondents met periodically throughout the Class Period and agreed on the prices to charge for Vehicle Carrier Services. The following are some examples:

- a. Beginning in February 1997, MOL, NYK Line, and “K” Line met multiple times at MOL’s office in Tokyo to discuss the upcoming renewal of a customer’s contract for Vehicle Carrier Services. Participants at these meetings included Messrs. NYK Line Executives 2 and 3, and “K” Line Executive 2 and “K” Line Executive 6. Representatives from MOL, NYK Line, and “K” Line agreed that each would ask customers for a price increase for the shipment of vehicles from Japan to the United States and from the United States to Japan.
- b. Around 2002 or 2003, MOL and “K” Line were both shipping vehicles from Europe to North America and agreed to each request a 3% to 5% price increase.
- c. In late 2007, a customer issued a tender for shipments of vehicles from Europe to the United States; executives from MOL and “K” Line discussed the tender and agreed to request a price increase from the customer.
- d. In late 2007 and early 2008, executives from MOL, NYK Line, and “K” Line met multiple times to try to obtain a 10% price increase for Vehicle Carrier Services. For example, Mr. Kusunose of NYK Line and MOL Executive 2 met in November 2007 and agreed to increase pricing for Vehicle Carrier Services in 2008. They also agreed to convince “K” Line to increase its rates. The following month MOL Executive 1 and Mr. Kato of NYK Line had dinner at a restaurant in Tokyo and discussed seeking price increases in 2008. On or about January 11,

2008, MOL Executive 1 and Mr. Kato had lunch with “K” Line Executive 1 and agreed to a goal of a 5% increase in 2008. On or about January 22, 2008, MOL Executive 2, Mr. Kusunose (of NYK Line), and “K” Line Executive 3 agreed on a target of a 10% price increase for 2008; they further agreed that each of the three companies would approach its principal customers and initially ask for a 10% price increase for Vehicle Carrier Services. In March 2008, MOL Executive 2, Mr. Kusunose (of NYK Line), and “K” Line Executive 5 met and discussed the 2008 price increase. MOL, NYK Line, and “K” Line then proceeded to approach their customers as agreed, and they obtained price increases.

- e. In fall 2008, MOL Executive 3, NYK Line Executive 4, and “K” Line Executive 4 communicated and agreed to seek a certain price increase for Vehicle Carrier Services. These executives further agreed that NYK Line and “K” Line would share a customer’s business from Japan to the west coast of the United States, and that NYK Line, “K” Line, and MOL would share the customer’s business from Japan to the east coast of the United States.
- f. In November 2011, executives from MOL and HAL met for dinner and discussed and agreed upon Vehicle Carrier Services rates from New York to West Africa, a route on which they both offered service.

59. Respondents’ agreements to fix, raise, or artificially maintain the price of Vehicle Carrier Services resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

60. The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

61. During the Class Period, the FMC did not approve, modify, or amend the rates charged by Respondents for Vehicle Carrier Services for shipments to and from the United States.

**Respondents Agreed Not to Compete for Customers for Vehicle Carrier Services**

62. In addition to their communications and agreements to control or reduce capacity and to fix, raise, or artificially maintain the price of Vehicle Carrier Services, throughout the Class Period, Respondents met periodically and agreed not to compete for customers for Vehicle Carrier Services. The following are some examples:

- a. In 2001, MOL and HAL agreed to allocate the transportation of vehicles from the United States to the Middle East. MOL was not the incumbent and wanted this business. Executives from MOL and HAL discussed and agreed that HAL would not bid in exchange for MOL agreeing to use HAL vessels on the route if it won the business. MOL won the business and then used HAL's vessels, as agreed.
- b. In 2001 or 2002, MOL, WWL, and NYK Line agreed to not compete to transport a customer's vehicles from the United States to Japan. At the time, MOL was the incumbent, and MOL asked WWL to not compete with MOL when the customer issued a tender. MOL told NYK Line what it planned to bid for the business and asked NYK Line to bid a higher amount. Both WWL and NYK Line agreed to do as MOL requested.
- c. In 2002 or 2003, MOL, WWL, and HAL agreed to allocate a customer's business. After the customer issued a tender for transporting its vehicles from Europe to the United States, executives from MOL approached executives from WWL about the customer's business from Thailand to Europe. WWL was the incumbent on the

route from Europe to the United States, and MOL wanted to obtain the business from Thailand to Europe. MOL and WWL agreed that MOL would not compete for WWL's route from Europe to the United States, and in exchange, WWL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business. In furtherance of this agreement, WWL gave MOL a price to bid as part of the tender for Europe to the United States. Similarly, MOL and Mr. Ervik of HAL agreed that HAL would not compete with MOL in MOL's attempt to obtain the Thailand to Europe business, and in exchange MOL would not compete for HAL's business on routes from the United States to Africa and the Middle East.

- d. In 2004, MOL and WWL agreed to not compete for each other's business with respect to two customers. MOL and WWL agreed that WWL would not compete with MOL for MOL business in the transport of one of the customer's vehicles from South Africa to the United States, and in exchange MOL would not compete for WWL's business in the transport of both customers' vehicles from Europe to the United States.
- e. In 2008 or 2009, MOL and "K" Line agreed to not compete for a customer's business. MOL was the incumbent for transporting that customer's vehicles from the United States to South Africa. Mr. Tsugi of "K" Line agreed that "K" Line would bid a higher rate than MOL did for this business, and in exchange Mr. Ito of MOL agreed to not compete for "K" Line's business from the United States to Brazil and Argentina.
- f. In 2010, CSAV and MOL agreed that MOL would not compete for CSAV's business to transport a customer's vehicles from the United States to Colombia

from 2010 to 2012; in furtherance of this agreement, CSAV gave MOL a price to bid.

- g. In February or March of 2012, MOL Executive 4 and WWL Executive 2 met in person and agreed that MOL would not compete for WWL's business transporting vehicles from the United States to China, and in exchange, WWL would not pursue business transporting a customer's vehicles from the United States to Korea. In furtherance of this agreement, WWL gave MOL a price to bid on the United States to China route, and MOL gave WWL a price to bid on the United States to Korea route.
- h. In August 2011, MOL, NYK Line, and "K" Line agreed to allocate the shipment of a customer's trucks and buses from Japan to the United States. All three companies were incumbent carriers on the route, with NYK Line having the largest share. They agreed what amount of business each company would seek and at what rates. They further agreed that if any of the three companies did not obtain the specified business, the others would share some of the business that they won. NYK Line coordinated the agreement between the companies and provided each with the rates to bid.

63. Respondents' agreements to not compete for customers' business resulted in artificially high prices paid by Complainants and Class Members for Vehicle Carrier Services on shipments to and from the United States during the Class Period.

64. The agreements described above were never filed with the Commission and never became effective under the Shipping Act.

### **Government Investigations Targeting Respondents**

65. United States, Canadian, Japanese, and EU competition authorities have initiated a global, coordinated antitrust investigation concerning the unlawful conspiracy alleged in this Complaint. To date, Respondents CSAV, “K” Line Japan, and NYK Japan have pled guilty to criminal violations of the Federal antitrust laws for their involvement in the conspiracy, and several of their executives have pled guilty or been indicted. The JFTC has also issued cease and desist orders targeted at the conspiracy to Respondents NYK Line, “K” Line, WWL, and NMCC.

66. A grand jury has been convened in Baltimore, Maryland to investigate alleged anticompetitive conduct involving Vehicle Carrier Services and has issued subpoenas to certain of the Respondents.

67. On or about February 27, 2014, the DOJ filed a criminal Information charging that, beginning as early as January 2000, CSAV conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

68. The criminal Information against CSAV further states that, during the relevant period, CSAV and its co-conspirators attended meetings and engaged in communications regarding bids and tenders in which they agreed to allocate customers by not competing for each other’s existing business for certain customers on certain routes; they agreed to not compete against each other on certain tenders by not bidding or agreeing to the prices they would bid on such tenders; they discussed and exchanged prices so as to not undercut each other’s pricing on certain tenders; they submitted bids in accordance with agreements reached; and they provided RoRo services at collusive and non-competitive prices.



69. In a plea agreement dated February 27, 2014, CSAV agreed to plead guilty to Sherman Act violations, and agreed to pay an \$8.9 million fine. CSAV and the United States further agreed that “[i]n light of the civil cases filed against the defendant,<sup>2</sup> which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information.”

70. On or about March 18, 2014, the JFTC issued cease and desist orders and fines against NYK Line, “K” Line, WWL, and NMCC.

71. On September 26, 2014, the DOJ filed a criminal Information charging that, beginning as early as February 1997, “K” Line Japan conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

72. In a plea agreement dated September 26, 2014, “K” Line Japan agreed to plead guilty to Sherman Act violations and agreed to pay a \$67.7 million fine. “K” Line Japan and the United States further agreed that “[i]n light of the civil cases filed against the defendant, which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offence charged in the Information.”

73. On December 29, 2014, the DOJ filed a criminal Information charging that, beginning as early as February 1997, NYK Japan conspired to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for Vehicle Carrier Services to and from the United States and elsewhere in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

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<sup>2</sup> Described below.

74. In a plea agreement dated December 29, 2014, NYK Japan agreed to plead guilty to Sherman Act violations and to pay a \$59.4 million fine. NYK Japan and the United States further agreed that “[i]n light of the civil cases filed against the defendant, which potentially provide for a recovery of multiple actual damages, the recommended sentence does not include a restitution order for the offence charged in the Information.”

75. On January 30, 2015, a former “K” Line Japan manager in the car carrier division of “K” Line Japan, Hiroshige Tanioka, agreed to plead guilty to Sherman Act violations and to accept an 18-month prison sentence and a \$20,000 fine.

76. On February 6, 2015, a former “K” Line Japan executive, Takashi Yamaguchi (a former general manager and executive officer in “K” Line Japan’s car carrier division), agreed to plead guilty to Sherman Act violations and to accept a 14-month prison sentence and a \$20,000 fine.

77. On March 9, 2015, a former general manager of the NYK Japan car carrier division, Susumu Tanaka, agreed to plead guilty to Sherman Act violations and to accept a 15-month prison sentence and a \$20,000 fine.

78. On March 26, 2015, a former general manager of the car carrier planning group of “K” Line Japan, Toru Otda, agreed to plead guilty to Sherman Act violations and to accept an 18-month prison sentence and a \$20,000 fine.

79. On October 6, 2015, the DOJ indicted three former executives of Respondents – Yoshiyuki Aoki, who held various senior management positions with “K” Line Japan, and Masahiro Kato and Shunichi Kusunose, who held senior management positions with NYK Japan – for conspiring to fix prices and suppress competition in the market for Vehicle Carrier Services in violation of the Sherman Act.

80. Respondent MOL made an application under the DOJ's Corporate Leniency Policy, and was conditionally accepted into the leniency program. The DOJ has "a policy of according leniency to corporations reporting their illegal antitrust activity at an early stage, if they meet certain conditions." As a condition of its application, MOL agreed to report price-fixing activity and/or other conduct potentially violative of Section 1 of the Sherman Act, 15 U.S.C. § 1, in the Vehicle Carrier Services industry.

### **The Multi-District Civil Litigation**

81. On May 24, 2013, F. Ruggiero & Sons, Inc. and Robert O'Rourke filed a complaint in the United States District Court for the District of New Jersey on behalf of themselves and a proposed class of indirect purchasers of Vehicle Carrier Services ("Indirect Purchasers"). This was the first of a number of complaints filed on behalf of individuals, entities, and prospective classes thereof, harmed by the conduct underlying this Complaint, including end payors, automobile dealers, and direct purchasers of Vehicle Carrier Services ("Direct Purchasers"). The first Direct Purchaser class action complaint was filed on August 9, 2013 in the United States District Court for the District of New Jersey, and Complainants ITM and Cargo Agents filed class action complaints in that court on behalf Direct Purchasers on August 30, 2013 and October 11, 2013, respectively. The Direct Purchaser complaints alleged that Respondents engaged in a combination or conspiracy to restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C § 1.

82. On October 8, 2013, the Judicial Panel on Multi-District Litigation selected the United States District Court for the District of New Jersey as the transferee court for all coordinated or consolidated pretrial proceedings in the MDL. The cases were consolidated and coordinated under the caption *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-3306 (ES), MDL No. 2471.

83. In negotiating their respective criminal plea agreements, Respondents CSAV, “K” Line and NYK Japan represented to the United States District Court for the District of Maryland that restitution need not be a part of their criminal plea agreements (described above) because of the civil litigation pending in the District of New Jersey. In spite of this, on October 13, 2014, all Respondents moved to dismiss the Direct Purchaser civil action, arguing, *inter alia*, that only the FMC had jurisdiction over the Direct Purchaser Plaintiffs’ claims.

84. On August 28, 2015, Judge Esther Salas of the District of New Jersey dismissed the Complainants’ class action on behalf of Direct Purchasers. Judge Salas found that the Direct Purchasers were barred from bringing a private antitrust suit in federal court for the conduct alleged in the action by 46 U.S.C. § 40307(d).

85. Complainants have appealed Judge Salas’s decision to the United States Court of Appeals for the Third Circuit, but the appeal has not yet been briefed.

**RESPONDENTS’ CONSPIRACY RESULTED IN HIGHER PRICES  
FOR PURCHASERS OF VEHICLE CARRIER SERVICES**

86. As a result of their unlawful contract, combination, or conspiracy, Respondents succeeded in restricting output and fixing, raising, maintaining, or stabilizing prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States.

87. Respondents’ agreements to reduce capacity and increase prices in 2008 affected all direct purchasers of Vehicle Carrier Services, including for shipments to or from the United States.

88. By agreeing to fix, raise, or artificially maintain prices of Vehicle Carrier Services, Respondents fixed, raised, maintained, or stabilized prices charged to all direct

purchasers, including for shipments to and from the United States, even where a particular agreement may have been made with respect to some customers.

89. Complainants and the other Class members have been injured in their business and property because they have paid more for Vehicle Carrier Services than they would have paid in a competitive market.

90. Respondents' unlawful contract, combination, or conspiracy has had at least the following effects:

- a. Competition for Vehicle Carrier Services has been restrained;
- b. Prices paid by Complainants and the members of the Class for Vehicle Carrier Services were fixed, stabilized, or maintained at supra-competitive levels throughout the world, including prices paid for Vehicle Carrier Services to and from the United States;
- c. Customers and markets for Vehicle Carrier Services were allocated among Respondents and their co-conspirators;
- d. Price competition regarding the sale of Vehicle Carrier Services was restrained, suppressed, or eliminated throughout the world, including for shipments to and from the United States, thus raising the prices of Vehicle Carrier Services above what they would have been absent Respondents' actions; as a result, Complainants and the other members of the Class paid more for Vehicle Carrier Services than they would have paid in a competitive marketplace;
- e. Direct purchasers of Vehicle Carrier Services have been deprived of the benefits of free and open competition; and

- f. As a direct and proximate result of the unlawful combination, contract or conspiracy, Complainants and the members of the Class have been injured and financially damaged in their businesses and property, in amounts to be determined.

91. The effects of Respondents' unlawful conduct are supported by economic data. Pricing for Vehicle Carrier Services is correlated with time charter rates and time charter rates can serve as a rough proxy for contemporaneous Vehicle Carrier Service rates charged by Respondents and their co-conspirators. An examination of time charter rates published by broker R.S. Platou shows that after a decade of relatively flat PCTC charter rates from 1990-2000, rates began to increase substantially in 2001. Between 2001 and 2008, R.S. Platou data show that rates increased by approximately 150 percent. This rate increase cannot be explained by normal market forces such as increased demand or increased costs:

- a. Demand for Vehicle Carrier Services increased only modestly during this time period. According to the United States International Trade Commission, U.S. imports and exports of automobiles increased by 24 percent from 2001 to 2008 (3 percent a year on average), far less than the 150 percent reported increase in PCTC charter rates (almost 20 percent a year on average); and
- b. Increases in prices for Vehicle Carrier Services far outpaced any increases in expenses during the same period.

92. As explained in paragraph 54, *supra*, demand for Vehicle Carrier Services fell dramatically in late 2008 as a result of the worldwide financial crisis, and Respondents jointly responded to this drop in demand by agreeing to scrap and layup a substantial number of vessels, and then implementing those agreements. In addition, Respondents continued to conspire to

allocate customers and markets, rig bids, and fix, raise, or artificially maintain prices for Vehicle Carrier Services. As a result of these various anticompetitive acts, prices for Vehicle Carrier Services began rising steadily starting in 2009 at a rate that cannot be explained or justified by fuel costs or demand.

93. Respondents' conduct throughout the Class Period resulted in artificially high prices for Vehicle Carrier Services charged throughout the world, including shipments to and from the United States, and as a result Complainants and Class Members paid more for Vehicle Carrier Services than they would have absent Respondents' unlawful conduct.

### **FRAUDULENT CONCEALMENT**

94. Conspiracies to fix prices, rig bids, and allocate customers and markets are, by their very nature, inherently self-concealing. If a conspiracy is to be successful at fixing prices, the participants must ensure that customers do not discover the existence of the conspiracy.

95. Respondents' acts in furtherance of the conspiracy were concealed and carried out in a manner specifically designed to avoid detection. Complainants and members of the Class did not discover and could not have discovered the alleged contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence.

96. Because Respondents' agreements, understandings, or conspiracies were kept secret, Complainants and members of the Class were unaware of Respondents' unlawful conduct alleged in this Complaint, and they did not know that they were paying supra-competitive prices for Vehicle Carrier Services during the Class Period.

97. None of the facts or information available to Complainants and members of the Class, if investigated with reasonable diligence, would have led to the discovery of hard facts

clearly demonstrating the existence and effects of the conspiracy alleged in this Complaint during the Class Period.

98. Moreover, Respondents affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and by creating the illusion that prices were rising as a result of increased demand and tight supply. For example, Respondents stated:

- a. "For our customers, quality services at a competitive cost are the essence of excellence." Mitsui O.S.K. Lines, Ltd. Annual Report 2000, at 9.
- b. "Market prospects for 2003 are characterised by a high degree of both political and economic uncertainty. The year as a whole is expected to show relatively weak economic growth and reduced demand for vehicles in some of the world's principal regions." Wilh. Wilhelmsen ASA Annual Report 2002, at 11.
- c. "Developments in the car carrier and ro-ro markets are of major importance to both Wallenius Wilhelmsen Lines and EUKOR. This business will continue to make the biggest contribution to the group's results. Both liner and car carrier operations . . . are affected by general trends in the world economy." Wilh. Wilhelmsen ASA Annual Report 2002, at 15.
- d. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2003, at 10.
- e. "CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport." *Id.* at 23.
- f. "The shipping business is very competitive and is noted for its sensitivity to changes in economic activity." CSAV Annual Report 2005, at 19.



- g. “CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport.” *Id.* at 42.
- h. “Car sales and demand for vehicle transport are expected to remain buoyant. The tight market for car shipments is accordingly expected to continue in 2005, even with the relatively large number of new car carriers due to be delivered during the year.” Wilh. Wilhelmsen ASA Annual Report 2004, at 9.
- i. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2006, at 15.
- j. “CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth.” *Id.* at 149.
- k. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2007, at 15.
- l. “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at 39.
- m. “The ‘K’ Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad.” “K” Line Annual Report 2008, at 55.
- n. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2008, at 17.
- o. “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at 35.

- p. “The ‘K’ Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition.” “K” Line Annual Report 2009, at 1.
- q. “Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase.” NYK Annual Report 2009, at 8.
- r. “Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year. Trades involving emerging markets such as China, South America, India and Africa offered relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates.” Wilh. Wilhelmsen ASA Annual Report 2009, at 11.
- s. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2009, at 17.
- t. “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at 36.
- u. “Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders . . . . Demand for transportation of cars and other cargo has improved significantly,

primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet.” Wilh. Wilhelmsen ASA Annual Report 2010, at 19-20.

- v. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2010, at 15.
- w. “CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at 35.
- x. “The results of the car-carrying services were severely affected by the fall in global demand seen in 2011 . . . [a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices.” CSAV Annual Report 2011, at 22.
- y. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2011, at 15.
- z. “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” *Id.* at 19.
- aa. “In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense.” NYK Annual Report 2012, at 102.

99. Moreover, Respondents were required by 46 U.S.C. § 40302(a) to file with the Commission any agreements to: discuss, fix, or regulate transportation rates; pool or apportion traffic, revenues, earnings or losses; regulate the volume or character of cargo to be carried; engage in an exclusive, preferential or cooperative working agreement between themselves; or

control, regulate, or prevent competition in international ocean transportation. By failing to file such agreements with the Commission, Defendants further concealed their anti-competitive conspiracy from Complainants and Class members.

100. Thus, Respondents and their co-conspirators engaged in a successful anti-competitive conspiracy concerning Vehicle Carrier Services, which they affirmatively concealed.

101. By reason of the foregoing, the statute of limitations with respect to the claims that Complainants have alleged in this Complaint did not begin to run until Complainants had all the hard facts necessary to be fully aware of the conspiracy alleged herein and its negative effects on their businesses.

102. Further, the statute of limitations was tolled by the filing of class action complaints in the District of New Jersey; at latest, this tolling began August 9, 2013, when the first Direct Purchaser class action complaint was filed.

### **CLASS ACTION ALLEGATIONS**

103. FMC Rule of Practice and Procedure 12 states that “[i]n proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent they are consistent with sound administrative practice.” 46 C.F.R. § 502.12. As the FMC has noted, “Rule 23 of the Federal Rules of Civil Procedure provides the mechanism by which a class action can be undertaken” before the FMC.<sup>3</sup>

104. Complainants brings this action on behalf of themselves and as a class action under the provisions of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class (the “Class”):

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<sup>3</sup> See *Mar-Mol Co. and Copycorp. v. Sea-Land Service, Inc.*, Docket No. 95-11, 1997 WL 400991 (FMC June 5, 1997), at \*8.

All persons and entities that purchased Vehicle Carrier Services for shipments to or from the United States directly from any of the Respondents or any current or former predecessor, subsidiary, or affiliate of each, at any time during the period from February 1, 1997 to December 31, 2012. This Class excludes all federal, state, governmental, and national entities and Respondents and their respective predecessors, subsidiaries, affiliates, and business partners.

105. Complainants believe that there are thousands of Class members located throughout the entire United States, the exact number, location, and identities of which are known by Respondents, making the Class so numerous and geographically dispersed that joinder of all members is impracticable.

106. There are numerous questions of law and fact common to the Class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained as a result thereof, including, but not limited to:

- a. Whether Respondents and their co-conspirators engaged in a combination and conspiracy among themselves to reduce capacity, allocate markets for, or fix, raise, maintain, or stabilize the prices of, Vehicle Carrier Services for shipments to and from the United States;
- b. The identity of the participants of the conspiracy;
- c. The duration of the conspiracy and the nature and character of the acts performed by Respondents and their agents and co-conspirators in furtherance of the conspiracy;
- d. Whether the alleged conspiracy violated the Shipping Act, including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*;

- e. Whether the conduct of Respondents and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of the Complainants and the other members of the Class;
- f. Whether the Respondents and their co-conspirators fraudulently concealed the conspiracy's existence from the Complainants and the other members of the Class;
- g. The effect of the conspiracy on the prices of Vehicle Carrier Services for shipments to and from the United States during the Class Period; and
- h. The appropriate class-wide measure of damages.

107. Complainants are direct purchasers of Vehicle Carrier Services and their interests are coincident with and not antagonistic to those of the other members of the Class. Complainants are members of the Class, have claims that are typical of the claims of the Class Members, and will fairly and adequately protect the interests of the members of the Class. In addition, Complainants are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

108. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications.

109. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

110. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously,

efficiently and without duplication of effort and expense that numerous individual actions would engender. The Class is readily identifiable through the files of Respondents, and prosecution as a class action will eliminate the possibility of repetitious litigation. Class treatment will also permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate the claims asserted in this Complaint. This class action presents no difficulties of management that would preclude its maintenance as a class action.

### **VIOLATIONS OF THE SHIPPING ACT AND COMMISSION REGULATIONS**

111. By reason of the facts stated in paragraphs 1 to 110 of this Complaint, which are incorporated by reference as if fully set forth herein, Complainants and members of the proposed Class have been and are continuing to be subjected to injury as a direct result of violations of the Shipping Act as follows:

#### **A. 46 U.S.C. § 40302(a)**

112. Respondents and their agents and co-conspirators entered into and engaged in agreements of the types enumerated in 46 U.S.C. § 40301(a), including an agreement and/or agreements “between or among ocean common carriers” to, *inter alia*:

- discuss, fix, or regulate transportation rates;
- pool or apportion traffic, revenues, earnings or losses;
- regulate the volume or character of cargo to be carried;
- engage in an exclusive, preferential or cooperative working agreement between themselves; and
- control, regulate, or prevent competition in international ocean transportation.

113. Respondents’ agreement(s) between and among themselves to restrain trade by reducing capacity, allocating customers and routes, rigging bids, and otherwise raising, fixing,

stabilizing, or maintaining prices for Vehicle Carrier Services for shipments to and from the United States, caused anticompetitive effects.

114. Any such agreements between and among Respondents were required to be filed with the FMC under 46 U.S.C. § 40302(a). Respondents willfully avoided or failed to file any such agreement with the FMC.

115. By failing to file their anticompetitive agreements with the FMC, Respondents violated 46 U.S.C. § 40302(a).

**B. 46 U.S.C. § 41102(b)**

116. By operating under agreements required to be filed with the FMC under § 40302(a), and that were not filed with the FMC, and that, therefore, had not become “effective” under 46 U.S.C. § 40304, Respondents engaged in conduct prohibited by 46 U.S.C. § 41102(b)(1).

**C. 46 C.F.R. § 535.401 *et seq.***

117. By failing to file with the FMC their agreements to restrain trade by reducing capacity, allocating customers and routes, rigging bids, and otherwise raising, fixing, stabilizing, or maintaining prices for Vehicle Carrier Services for shipments to and from the United States, Respondents violated the FMC’s regulations supporting the Shipping Act requirements for the filing of agreements.

**D. 46 U.S.C. § 41102(c)**

118. Beginning at a time unknown to Complainants, but at least as early as February 1, 1997, and continuing at least through the end of the Class Period, Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to receiving, handling, storing or delivering property. Respondents and their co-conspirators violated 46



U.S.C. § 41102(c) through their intentional conduct designed to unreasonably interfere with the international transportation of property by Complainants and by members of the proposed Class.

**E. 46 U.S.C. § 41105**

119. Collectively, Respondents constitute a “conference or group of two or more common carriers.”

120. By engaging in the conduct alleged in this Complaint, Respondents engaged in behavior prohibited by 46 U.S.C. § 41105, including, *inter alia*:

- taking concerted action that resulted in an unreasonable refusal to deal with Complainants and other members of the proposed class;
- engaging in conduct that unreasonably restricted the use of intermodal services;
- denying in the export foreign commerce of the United States compensation to ocean freight forwarders, or limiting that compensation to less than a reasonable amount; and
- allocating shippers among specific carriers that were parties to an agreement, in a manner not authorized by 46 U.S.C. 40303(d).

**F. 46 U.S.C. § 41104(10)**

121. Beginning at a time unknown to Complainants, but at least as early as February 1, 1997, and continuing through at least the end of the Class Period, Respondents and their co-conspirators violated this section through their concerted action resulting in an unreasonable refusal to deal and negotiate. In allocating customers – such as Complainants – every Respondent or co-conspirator that agreed, in deference to their co-conspirators, not to pursue the respective Complainants’ and proposed Class members’ business and not to pursue

Complainants and proposed Class members as customers thereby unreasonably refused to deal or negotiate in good faith.

### **INJURY SUFFERED BY COMPLAINANTS AND THE PROPOSED CLASS**

122. As a result of the facts alleged in the foregoing paragraphs, Complainants and members of the proposed Class have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

123. Complainants and proposed Class members' injuries are a direct result of Respondents' violations of 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*

124. Respondents' unfiled anticompetitive agreements involved United States domestic commerce and import commerce, and had a direct, substantial, and foreseeable effect on United States commerce by raising and fixing prices for Vehicle Carrier Services for shipments to and from the United States.

125. In formulating and carrying out the alleged agreement, Respondents and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth in this Complaint.

126. Respondents' conspiracy had the following effects, among others:

- a. Price competition for Vehicle Carrier Services has been restrained, suppressed, or eliminated for shipments to and from the United States;
- b. Prices for Vehicle Carrier Services sold by Respondents, their divisions, subsidiaries, and affiliates have been fixed, raised, stabilized, and maintained at artificially high, non-competitive levels for shipments to and from the United States; and

- c. Complainants and members of the Class who purchased Vehicle Carrier Services from Respondents, their divisions, subsidiaries, and affiliates have been deprived of the benefits of free and open competition.

127. As a direct and proximate result of Respondents' anticompetitive conduct, Complainants and members of the Class have been injured in their business or property by paying more for Vehicle Carrier Services than they would have paid in the absence of the conspiracy.

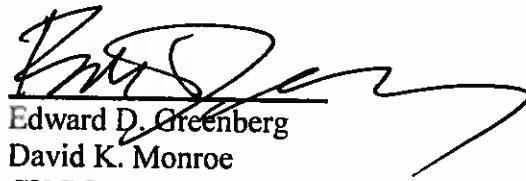
### **PRAYER FOR RELIEF**

WHEREFORE, Complainants pray for relief as follows:

- a) That the Respondents be required to answer the charges herein;
- b) That the Commission certify this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that Complainants be deemed adequate representatives of the Class;
- c) That, after due investigation and hearing, Respondents be found to have violated 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and 46 CFR § 535.401 *et seq.*;
- d) That the Commission order Respondents to cease and desist from violating the Shipping Act, including the above-specified provisions thereof;
- e) That Complainants and the Class recover reparations in a sum to be proven under 46 U.S.C. § 41305, with interest (46 U.S.C. § 41305(a));
- f) That Complainants and the Class members recover their costs of the suit, including reasonable attorneys' fees as provided by 46 U.S.C. § 41305(e);

- g) That Complainants and the Class be awarded up to double their proven actual injury under 46 U.S.C. § 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. § 41102(b) and § 41105(1) and (3);
- h) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and
- i) That the Commission direct further relief as it may deem just and proper.

Dated: December 29, 2015



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*Counsel for Complainants*

**VERIFICATION**

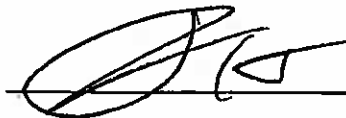
*PATRICK*


~~Peter~~ Costin, being first duly sworn on oath deposes and states that he is President of RCL Agencies, Inc., and that he has read the foregoing Complaint, and the facts stated therein he believes to be true on information and belief and upon information received from others.

Date

12/10/15

Signed



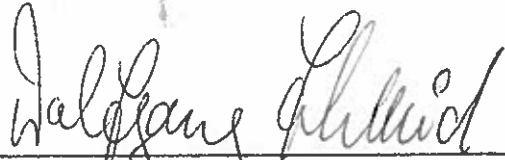
  
SUSANNA PILOT  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 4/27/2019

**VERIFICATION**

WOLFGANG SCHMID, being first duly sworn on oath deposes and states that he is Vice President of International Transport Management, Corp; that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Date: \_\_\_\_\_

12/01/2015



Wolfgang Schmid, Vice President

Subscribed and sworn to before me on  
this 2 day of Dec, 2015.



Notary Public

Amrithavalli Murali  
Notary Public  
New Jersey  
My Commission Expires 7-30-19  
ID No. 2388018

**VERIFICATION**

Jose Donado, being first duly sworn on oath deposes and states that he is President of Cargo Agents, Inc.; that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Date: December 3, 2015

A handwritten signature in black ink that reads "Jose Donado". The signature is written in a cursive style with a large, stylized "D" and "o" at the end.

Jose Donado  
Cargo Agents, Inc.  
143-30 38<sup>th</sup> Ave., Suite 1H  
Flushing, NY 11354